

**JAMES M. BINGMAN, DECEASED<sup>1</sup>**  
Claimant

## A-1 STAFFING

Respondent

## WESTERN GUARANTEE FUND

Insurance Carrier

## ORDER

Respondent requested review of the November 12, 2008 Award by Administrative Law Judge (ALJ) Steven J. Howard. The Board heard oral argument on February 10, 2009.

## APPEARANCES

Robert W. Harris, of Kansas City, Kansas, appeared for the claimant. Jeffrey W. Deane, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

## RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

## ISSUES

The ALJ found that the claimant was indeed in a common law marriage with Dawn Bingman and granted surviving spouse benefits. He also ordered the respondent to

<sup>1</sup> Claimant died on August 19, 2006.

reimburse Bingman for claimant's funeral expenses in the amount of \$1,274.35 and to pay for any or all medical bills related to the claimant's occupational accident and subsequent death.<sup>2</sup>

Respondent appealed this Award and contends that the evidence within this record does not establish a common law marriage existed between Dawn and James Bingman. Thus, that portion of the ALJ's Award should be reversed, denying Dawn Bingman surviving spouse benefits.

Claimant argues that the ALJ should be affirmed in all respects.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

The ALJ's Award sets out findings of fact and conclusions of law that are detailed, accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein except as hereinafter noted. Accordingly, the facts will not be restated except as necessary to explain the Board's decision.

The dispositive issue in this claim is whether the evidence established that a common law marriage existed between the decedent and Dawn Bingman.

As noted by the ALJ, Kansas has long recognized the existence and validity of common law marriages. There are three essential elements. They are:

- 1) capacity of the parties to marry;
- 2) a present marriage agreement between the parties; and
- 3) a holding out each other as husband and wife to the public.<sup>3</sup>

Respondent concedes that both James and Dawn had the capacity to enter into a common law marriage. While they were originally married in 1981 and had two children together, the two were legally divorced in 1990. However, it is their actions after that time that are the focus in this appeal. The litigants agree that neither of them ever formally

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<sup>2</sup> Although respondent has not yet reimbursed Ms. Bingman for the funeral bills, it does not dispute its responsibility to do so or to pay the bills associated with the claimant's rather extensive medical care that was provided up to the time of his death. Respondent's counsel acknowledged this at oral arguments and those are to be placed in line for payment.

<sup>3</sup> *Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993).

married any one else after their divorce in 1990. And there is no dispute that following their divorce James returned to the family home residing with his ex-wife and his children off and on in the years that followed. There is equally no dispute that in those times he was not living in the family home, James had some sort of relationship with a woman named Nancy and that Nancy and James shared a preoccupation with illegal substances. Thus, the focus in this appeal is on the remaining two elements, whether there was a present marriage agreement between Dawn and James and whether the two held themselves out to the public as husband and wife.

Dawn Bingman steadfastly maintains that she and James reestablished their marital relationship following their 1990 divorce. She testified that a few weeks after their divorce James moved back in to the family home, where he remained until he succumbed to his drug addiction and he left, presumably taking up with Nancy in another location. In 1995 Dawn Bingman again filed for divorce, an event that compelled James Bingman to return to the family home. The divorce petition was dismissed, and according to Dawn, James remained in the home living with her “off and on”<sup>4</sup> until his 2001 injury.<sup>5</sup> And after the injury, she routinely went to see him at the hospital and except when he was confined to hospitals in the years that followed, she testified that he lived with her. The two shared a bank account, they referred to each other as husband and wife and according to her, she viewed herself as married. She cashed the weekly compensation checks for James. A family friend confirmed that Dawn and James held themselves out as married after the 1990 divorce. The Bingman children didn’t seem to notice any difference in the relationship, acknowledging that James would have periods where he would live with them and at other times, would fall victim to his addiction and leave. Dawn acknowledged James’ drug addiction and further conceded that when James was taking drugs, he seemed to seek out Nancy’s company. Nonetheless, Dawn remained tied to James in what she believed was a marriage relationship. She also testified that during James’ last hospitalization, she was planning on finding an apartment for her and James to live in so that when he was released from the hospital, she would be able to care for him given his weakened and immobile state.

There are indications directly from James that suggest an awareness that he and Dawn Bingman were married. In 2004, James Bingman initiated his own action to terminate the child support that had accrued since the 1990 divorce proceedings. In this filing, James Bingman alleges that although divorced in 1990 from Dawn, he began living in a common law relationship with Dawn Bingman in November 1990. This legal proceeding was never properly served upon Dawn, but the petition was verified by James and signed before a notary.

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<sup>4</sup> R.H. Trans. at 8-9.

<sup>5</sup> D. Bingman Depo. at 20-21.

There are, however, some other indicia that might suggest a contrary finding with respect to a common law relationship as between James and Dawn. James Bingman referred to Dawn Bingman as his “ex-wife” when asked who provided certain information to hospital personnel.<sup>6</sup> At his deposition taken on February 14, 2003 James testified that he was residing with his “girlfriend” Nancy at the time of his accident<sup>7</sup> and at other times as well. Indeed, shortly after his accident James learned that no less than 3 women appeared at the hospital claiming to be his wife.<sup>8</sup>

After considering all this evidence, the ALJ made the following observation and conclusion:

In reviewing the facts herein, once the existence of a common law marriage arose, that marriage is presumed to be valid until such time as a divorce decree is entered. The fact that decedent may have not wanted to be married in 2004, does not void the existence of the marriage which came into existence in November of 1990 following the initial granting of a divorce decree. If the decedent believed that he was not married there would be no reason for him to file the petition for divorce in 2004. Further, the decedent verified the facts contained in the petition, which acknowledged the existence of a common law relationship in existence since November 1990.

Based upon the foregoing, it is specifically determined that Dawn E. Bingman, is a surviving spouse of James M. Bingman, the decedent.<sup>9</sup>

The Board has considered the record as a whole and finds the ALJ’s Award should be affirmed. Although James Bingman’s behavior was less than optimum with respect to his relationship with Dawn Bingman, the Board finds that it is more likely than not that Dawn and James entered into a common law marriage in November 1990 when he returned to the family home following the parties divorce. Their relationship continued, albeit in an unconventional manner, until his death. Both James and Dawn filed separate actions in court to dissolve their marriage, James going so far as to specifically allege (under oath) a common law marriage commencing in November 1990. As noted by the ALJ, there would be no need for this legal intervention if the parties did not believe they were in a marital relationship. Under these facts and circumstances, the Board finds that a common law relationship was established commencing in 1990. The ALJ’s Award is, therefore, affirmed.

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<sup>6</sup> Claimant’s Depo. (Feb. 14, 2003) at 40.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* at 42.

<sup>9</sup> ALJ Award (Nov. 12, 2008) at 7.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Steven J. Howard dated November 12, 2008, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2009.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert W. Harris, Attorney for Claimant  
Jeffrey W. Deane, Attorney for Respondent and its Insurance Carrier  
Steven J. Howard, Administrative Law Judge